IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.645 OF 2006

In

NOTICE OF MOTION NO.1144 OF 2006

In

SUIT NO.1021 OF 2006

Rajendra Ambalal Jhaveri : Appellant

(Orig. Plaintiff)

V/s.

Madhani Developers Pvt. Ltd. : Respondent

(Orig. Defendant)

...

Mr.M.U.Pandey for the appellant.

Mr.K.S.Chaudhari i/b. M/s.Kishore Thakordas & Co., for the respondent.

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CORAM : R.M.LODHA & S.A.BOBDE,JJ.

DATE : SEPTEMBER 11, 2006.

P.C.

1. This appeal is directed against the order refusing prayer for ad-interim relief made in Notice of Motion No.1144 of 2006. The Motion has been ordered to be heard in the regular course by the learned Motion Judge. The learned Motion Judge was of the view that save and except

the order passed on 3.5.2006, no further ad-interim relief can be granted.

2. The defendant in opposition to the Notice of Motion filed affidavit of Rajesh Madhani. In para 4 of the said affidavit, the following statements have been made:-

> "I say that as has been set out by the Plaintiff J.V.P.D. Scheme flats are normally constructed and handed over in a bare (khokha) form with various flat holders carrying out all internal work as per their choice. I say that accordingly possession of all flats in the building except the flats of the Plaintiff herein and his co-owners have been handed over to the various flat holders as far back as March, 2006 immediately after issue of Occupation Certificate. I say that these Defendants do not have possession of any other flats. I say that accordingly various flat holders have been carrying on internal work in their flats. I say that on perusal of the photographs annexed to the affidavit dated 10th April, 2006 it is seen that the same pertains to internal works in the flats and are not photographs of demolition of any external wall as is being alleged. I categorically state that these Defendants are not carrying on any illegal and unauthorized work as alleged and the fifth floor flats of the Plaintiff which remain in the control and custody of these Defendants is in a bare (khokha) form without any elevation features being enclosed as falsely alleged. I state that the allegations made by the Plaintiff against these Defendants are malafide and mischievous and only made with a view to create prejudice against these Defendants. I deny that these Defendants have carried out any internal work after the issue of Stop Work Notice dated 5th April, 2006 and/or are executing any work in excess to or contrary to the approved plans as alleged. I say that the Plaintiff with a view to wriggle out of his obligations to compensate for loss in area has made false and bogus complaints with the

> concerned authorities which are causing inconvenience and hardships to other flat holders who have been carrying on internal work after receipt of possession from these Defendants."

3. We are satisfied that in view of the aforesaid factual position, the learned Motion Judge cannot be said to have erred in refusing to grant ad-interim relief to the appellant, save and except the order that was already passed on 3.5.2006.

4. Appeal is dismissed in limine.

R.M. LODHA, J.

S.A. BOBDE, J.